IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 83 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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COMMISSIONER OF INCOME TAX

Versus

GUJARAT STATE WAREHOUSING CORPORATION

Appearance:

1. INCOME TAX REFERENCE No. 83 of 1987

MR BB NAIK with MR MANISH R BHATT for Petitioner No. 1

MR MANISH J SHAH for MR JP SHAH for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 28/08/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

We have heard Mr. B.B. Naik, learned Standing Counsel for the Revenue and Mr. Manish J Shah for Mr. J.P. Shah learned counsel for the assessee.

2. In this Reference, two questions are referred at at the instance of the Revenue and one question is

referred at the instance of the assessee.

3. The first question referred at the instance of the Revenue is in respect of assessment years 1973-74 to 1975-76. The question is as under:

"Whether the assessee is entitled to interest under sec. 244 (1A) in respect of interest payments under sections 215, 217 and 220 (2) of the Income Tax Act, 1961 ?"

Mr. Shah, learned counsel for the assessee submits that the controversy raised herein is concluded in favour of the assessee as per the decision of the Madras High Court in CIT vs. Needle Industries Pvt. Ltd. 233 ITR 370, Madhya Pradesh High Court in CIT vs. Sardar Balwant Singh Gujrat 86 CTR 64 and Kerala High Court in CIT vs. Ambat Echukutty Menon 173 ITR 581.

Having perused the aforesaid decisions, we find no reason not to agree with the view taken in the aforesaid decisions. Accordingly, the question is answered in the affirmative i.e. in favour of the assessee and against the Revenue.

4. The second question referred at the instance of the Revenue in respect of assessment years 1977-78 and 1978-79 is as under:

"Whether the assessee is entitled to interest u/s.214 on advance tax payments ?"

The learned counsel for the parties agree that the question is covered by the decision of the Apex Court in Modi Industries Ltd. vs. CIT 216 ITR 759 in favour of the assessee.

In view of the above decision, we answer this question in the affirmative i.e. in favour of the assessee and against the Revenue.

5. The last question in this Reference is at the instance of the assessee and is for the assessment years 1977-78 and 1978-79. The question is as under:

"Whether the assessee is entitled for interest under section 244 (1A)/214 on payment of tax made under section 140 A of the I.T. Act, 1961 ?"

The learned counsel for the assessee submits that the controversy raised herein is concluded by the

decision of the Apex Court in Modi Industries Ltd. vs CIT (supra) as explained by the Punjab & Haryana High Court in CIT vs. Hansa Agencies Pvt. Ltd. 234 ITR 271 and by the Karnataka High Court in CIT vs. NGEF Ltd. 244 ITR 665.

We find no reason to take a different view. We accordingly answer the question in the affirmative i.e. in favour of the assessee and against the Revenue.

6. The Reference stands disposed of accordingly.

(M.S. Shah,J) (D.A. Mehta,J)

zgs/-